Supreme Court, U.S.
FILED

No. 991133 JAN - 4 2000

OFFICE OF THE CLERK

In the
Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

SCOTT D. BOYER,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois

PETITION FOR WRIT OF CERTIORARI

JOHN X. BRESLIN
Deputy Director
ROBERT M. HANSEN
Staff Attorney
State's Attorneys Appellate Prosecutor
628 Columbus St., Ste. 300
Ottawa, Illinois 61350
(815) 434-7010

GARY SPENCER
State's Attorney
Whiteside County Courthouse
Morrison, Illinois 61270
(815) 772-7201

JAMES E. RYAN
Attorney General of Illinois

JOEL D. BERTOCCHI
Solicitor General of Illinois

WILLIAM L. BROWERS
Counsel of Record
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2569

Counsel for Petitioner

Printed by Authority of the State of Illinois (P.O. 27168—55—1-4-00)

4 2 pp

QUESTION PRESENTED FOR REVIEW

Can an officer of one county search a car and seize contraband therefrom pursuant to the good faith arrest of the driver on a warrant from another county later found to have erroneously not been recalled?

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINION BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISION INVOLVED 2

STATEMENT OF THE CASE 2

REASON FOR GRANTING THE WRIT:

This Court Should Grant *Certiorari* To State That the Exclusionary Rule Has Been Improperly Applied Here Where An Officer Arrested Respondent In Complete Good Faith Reliance On A Stale Arrest Warrant From Another County, Because Its Application Is Unwarranted When It Does Not Result In Appreciable Deterrence And Is Thus Within The Good Faith Exception To the Exclusionary Rule, As Held In *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 1191, 131 L.Ed.2d 34 (1995). 8

CONCLUSION 18

APPENDIX ..... *infra*

TABLE OF AUTHORITIES

United States Supreme Court Cases PAGE(S)

Arizona v. Evans, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995) ..... *passim*

New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981) 3, 10

Pennsylvania Board of Probation and Parole v. Scott, 524 U.S. 357, 118 S.Ct. 2014, 141 L.Ed.2d 344 (1998) 16

United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) 7, 11

Whiteley v. Warden, Wyoming State Penitentiary, 401 U.S. 560, 91 S.Ct. 1031, 28 L.Ed.2d 306 (1971) 14

Other Cases

People v. Bailey, 159 Ill.2d 498, 639 N.E.2d 1278, 203 Ill.Dec. 459 (1994), *cert. den.*, *Bailey v. Illinois*, 513 U.S. 1157, 115 S.Ct. 1116, 130 L.Ed.2d 1080 (1995) 3, 10

People v. Boyer, 305 Ill.App.3d 374, 713 N.E.2d 655, 239 Ill.Dec. 124 (3rd Dist. 1999) 1, 2, 8

People v. Turnage, 162 Ill.2d 299, 642 N.E.2d 1235, 205 Ill.Dec. 118 (1994) 14, 15

People ex rel. Kunstman v. Shinsaku Nagano,
389 Ill. 231, 59 N.E.2d 96 (1945) 16

Constitutional Provision

U.S. Const., Amend. IV 2

Additional Authority

Ill.Const., 1970, art. VI, sec. 19 16

55 ILCS 5/3-9005(a)(1) 9, 16

PETITION FOR WRIT OF CERTIORARI

The Petitioner, the People of the State of Illinois, respectfully asks this Court to issue a writ of *Certiorari* to the Appellate Court of Illinois, Third Judicial District, to review that court's judgment affirming the pretrial suppression of contraband seized from Respondent's vehicle, following Respondent's arrest pursuant to the police officer's good faith belief that there existed an arrest warrant for Respondent from another county.

OPINION BELOW

The decision of the Illinois Appellate Court, *People v. Boyer*, 305 Ill.App.3d 374, 713 N.E.2d 655, 239 Ill.Dec. 124 (3rd Dist. 1999), is attached as Appendix A. The October 6, 1999, order of the Illinois Supreme Court denying leave to appeal from the published decision of the Illinois Appellate Court is attached as Appendix B.

JURISDICTION

The published decision of the Illinois Appellate Court was entered on June 15, 1999. The Petitioner filed a timely petition for leave to appeal in the Illinois Supreme Court, which was denied on October 6, 1999. This petition is filed within 90 days of the order denying leave to appeal, as provided by Supreme Court Rule 13.1. This Court's jurisdiction is invoked under 28 U.S.C. sec. 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

UNITED STATES CONSTITUTION

Amendment (IV)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

STATEMENT OF THE CASE

The Respondent was arrested for possession of cannabis with the intent to deliver. His motion to suppress evidence was first denied and then granted. Petitioner appealed, and the appellate court affirmed the trial judge's holding that, as the Respondent was arrested pursuant to a warrant from another county which should have earlier been recalled but had not been, the evidence found in the search incident to arrest should have been suppressed. *People v. Boyer*, 305 Ill.App.3d 374, 713 N.E. 2d 655, 239 Ill.Dec. 124 (3rd Dist. 1999).

In more detail, the Respondent was arrested in Whiteside County on August 10, 1997, for unlawful possession of more than 30 but less than 500 grams of cannabis with intent to deliver and unlawful possession of more than 30 but less than 500 grams of cannabis. (C. 4-7) The Respondent moved to suppress the cannabis, alleging, under the Fourth Amendment to the United States Constitution, "That the State may not rely on a stale warrant to dem-

onstrate probable cause to arrest Respondent and search his vehicle." (C. 38-40)

The judge first denied the motion to suppress, holding that the search of the car which revealed the cannabis was a permissible automobile search pursuant to the arrest of the driver-Respondent under *People v. Bailey*, 159 Ill.2d 498, 639 N.E.2d 1278, 203 Ill. Dec. 459 (1994), and *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981). He rejected the Respondent's argument that this principle did not apply because Respondent was arrested on a Lee County, Illinois, warrant (People's Exhibit 1), which was invalid. He did so because the warrant introduced in evidence was facially valid and was not shown to have been recalled. He stated therein that if it were shown that the warrant should have been recalled, the arrest would be unlawful and the evidence suppressed. (C. 43-44)

The Respondent subsequently presented affidavits concerning the Lee County warrant. William Brozovich, a Lee County Assistant State's Attorney, stated in his affidavit that the arrest warrant issued on June 23, 1997, because the Respondent had failed to appear on a case. Thereafter, the Respondent appeared in court in Lee County on July 17, 1997, entered a plea of not guilty, and received a continuance to August 20, 1997, from Judge Martin Hill. The Lee County State's Attorney's Office failed, through oversight, to inform Judge Hill on July 17, 1997, of this outstanding active arrest warrant, although it should have done so. (C. 45-46) The Assistant State's Attorney attached the relevant Lee County docket sheets to his affidavit. (C. 47-49)

Judge Hill stated in his affidavit that the Respondent appeared before him on July 17, 1997, and pled not guilty. The judge continued the case to August 20, 1997. The judge was not informed by the Lee County State's Attorney's Office of the outstanding arrest warrant for the Respondent. Had he been informed of that, he would have recalled it due to the Respondent's appearance in court. (C. 53-54)

These affidavits were the basis for the Respondent's motion to reconsider the denial of the motion to suppress evidence. (C. 50-51) The judge granted the motion to reconsider, and suppressed the evidence on December 29, 1997. (C. 2)

At the hearing on the motion to suppress evidence, Deputy Glen Estrada testified that on August 10, 1997, he stopped the Respondent for speeding in Sinnissippi Park. (R. 4-6, 23-24) He intended to warn the Respondent about his speed. (R. 24) When the Respondent stopped, the deputy approached him and told him he was speeding. (R. 8-9) There was a female passenger in the Respondent's vehicle. (R. 12) He asked to see the Respondent's license, which the Respondent gave him. (R. 9) He went to his squad car and called in the stop. (R. 11) He was informed that there was a warrant for the Respondent's arrest regarding a driving under the influence of alcohol offense, possibly for failure to appear. (R. 11-12, 24, 25)

He then told the Respondent that he was under arrest because of the warrant. (R. 12-13) The Respondent replied that the officer was incorrect about the warrant and that the matter had been "cleared up" in front of a Lee County judge weeks before. (R. 14) The deputy replied that he did not know about that, but the warrant was in

the computer and he had to arrest the Respondent. (R. 14-15) He handcuffed the Respondent and put him in the squad car. (R. 15)

He had learned through his radio call that the Respondent was not the registered owner of the vehicle so he did not allow the Respondent to permit the other person to take the vehicle. (R. 16, 31)

The deputy first searched the Respondent and found approximately $1,600. (R. 26-27) The money was folded in quarters or more. (R. 27, 47) He then searched the car, a Fiero, a very small two-passenger car, incident to the arrest of the Respondent. (R. 17, 21, 26) Behind the passenger seat, he saw a blue shirt which appeared to cover something. (R. 18-19) The item he saw was approximately one foot by four inches. (R. 19) It contained green, leafy material which appeared to be cannabis. (R. 20) The Respondent immediately said that the cannabis was his, and that the passenger did not know of it. (R. 22) The officer then informed the Respondent of his *Miranda* rights, the Respondent waived them, and then stated again that the cannabis was his and the passenger did not know of it. (R. 22)

Respondent did not consent to the search. (R. 22)

Respondent presented a Wisconsin driver's license. (R. 24) It was routine to check the validity of a license presented at a traffic stop by contacting the dispatcher who runs a check through the Illinois Secretary of State's computer to get the status of the license. (R. 24).

Respondent testified that there was no warrant for his arrest issued in Lee County, nor did he receive a notice to appear in court in Lee County for failure to appear on

a DUI case. (R. 33-34) Some time before this arrest, he appeared in court in Lee County before Judge Hill and got a court date of August 20, 1997. (R. 34)

He identified a docket sheet on his Lee County DUI case, which he got from the Lee County Circuit Clerk, which indicated a June, 1997 arrest warrant, his July 17, 1997 court appearance, and the continuation of the case to August 20, 1997. (R. 35-36) The docket sheet was denied admission into evidence. (R. 43-44)

In his testimony, Respondent admitted speeding. (R. 37, 46) The officer arrested him after running a license check. (R. 37-38) The officer said that there was a Lee County arrest warrant. (R. 38) Respondent told him that there was no such warrant and that he was not due in court in Lee County until August 20, 1997. (R. 38-39) The officer handcuffed him and put him in the squad car. (R. 39-40) The officer pulled out a shirt and then a package from the back of the car. (R. 40) Respondent also testified that the officer kept asking the Respondent to whom the cannabis belonged. First, the Respondent told him he would say nothing. The officer replied that if the Respondent admitted that the cannabis was his he would release the girl, so Respondent said that it was his. (R. 41) He said the officer also told him that he would allow the girl to drive away the car. (R. 42-43)

The judge admitted into evidence People's Exhibit 1, the June 23, 1997, arrest warrant. (R. 48-49).

Respondent argued that he could not have been properly arrested based on the stale warrant, that the officer could not search beyond the passenger compartment of the vehicle, and that the officer should have let Respon-

dent's companion drive away the vehicle. (R. 49-50) The state's attorney argued that the officer properly searched the car pursuant to the arrest of Respondent made in good faith reliance on the existence of the arrest warrant. (R. 54-57) Respondent's counsel replied that the officer acted in good faith in believing that there was a warrant, but the whole point of the defense was that because there should not have been a warrant, the officer could not make a search pursuant to an arrest thereon. (R. 59-60) The state's attorney emphasized that the warrant had not been recalled and that a mistake of the court was not attributable to the police. (R. 60-61) He also noted the applicability of Illinois' statutory good faith exemption to the suppression of evidence. 725 ILCS 5/114-12(b)(1). (R. 61)

At the hearing on the motion to reconsider the denial of the motion to suppress, Respondent presented and argued the affidavits of Lee County Assistant State's Attorney Brozovich and Judge Hill. (R. 67-68) The state's attorney again argued the officer's good faith and the statute and case law denying suppression of evidence resulting from a search pursuant to a good faith arrest, including *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 131 L.Ed.2d 34 (1995), and *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). (R. 69-72) Respondent responded that he should prevail as the warrant was stale although the officer acted in good faith. (R. 72-73)

The judge granted the motion to reconsider and suppressed the evidence because there should not have been an active warrant even though the officer acted in good faith. (R. 74-76) The Petitioner appealed to the Illinois

Appellate Court, as discussed, but the decision of the trial judge was affirmed. The Petitioner then sought leave to appeal to the Illinois Supreme Court, which was denied. Hence, the Petitioner seeks review of the last decision of the Illinois courts and files this petition within 90 days of the Illinois Supreme Court's refusal to review the decision of the Illinois Appellate Court.

REASONS FOR GRANTING THE WRIT

This Court Should Grant *Certiorari* To State That the Exclusionary Rule Has Been Improperly Applied Here Where An Officer Arrested Respondent In Complete Good Faith Reliance On A Stale Arrest Warrant From Another County, Because Its Application Is Unwarranted When It Does Not Result In Appreciable Deterrence And Is Thus Within The Good Faith Exception To the Exclusionary Rule, As Held In *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 1191, 131 L.Ed.2d 34 (1995).

This is a very important question because the Illinois Appellate Court has determined in a published opinion that suppression of this evidence under the exclusionary rule will appreciably deter similar violations in the future. *People v. Boyer*, 305 Ill.App.3d 374, 713 N.E.2d 655, 658-60, 239 Ill.Dec. 124 (3rd Dist. 1999). This is simply not so. The instant arrest and search occurred in Whiteside County by a Whiteside County deputy pursuant to an arrest warrant of which he learned when he ran a radio check of the Respondent's license. That warrant was from another county, Lee County. Although it should have been recalled, it should have been recalled by the Lee County judge whether or not the Lee County

State's Attorney's Office requested that. Neither the Whiteside County State's Attorney's Office, the judge sitting in Whiteside County nor the arresting Whiteside County deputy had anything to do with the issuance of the warrant or the mistaken failure to recall it. The Whiteside County State's Attorney's Office is wholly separate from the Lee County State's Attorney's Office.[1] Too, there is no question that it was the Lee County judge who failed to recall the arrest warrant. He had the docket sheet in front of him to see that the arrest warrant pended. While it is true that the Lee County assistant state's attorney failed to remind the judge of that warrant, the ultimate responsibility for the issuance and recall of warrants belongs to the judge, not the prosecutor.

The exclusionary rule has not been properly applied here. When it does not result in appreciable deterrence, its use is unwarranted. *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 1191, 131 L.Ed.2d 34 (1995). Suppressing evidence sought to be used by the Whiteside County State's Attorney because of a mistake by the Lee County State's Attorney and a judge sitting in Lee County in allowing an arrest warrant to pend for the Respondent results in no appreciable deterrence because the Whiteside County State's Attorney's Office, as well as the arresting officer, did nothing from which they should be deterred in the future. They cannot be deterred from repeating a mistake which itself was a completely good faith mistake made by an independent prosecutor and a judge in another county.

---

[1] Each state's attorney is to prosecute crime in the circuit court for his county. 55 ILCS 5/3-9005(a)(1).

The judge below simply erred in granting the Respondent's motion to suppress the cannabis found in his car. The appellate court erred in affirming that suppression. The Respondent was arrested by the officer in complete good faith when the officer learned by radio that there was a warrant for the Respondent's arrest. He searched the Respondent's car pursuant to that arrest and found cannabis. Given the officer's good faith, even though it was later learned that the arrest warrant should have been recalled, the seized cannabis should not have been suppressed.

Moreover, the erroneous warrant resulted from the actions of the Lee County State's Attorney Office and a Lee County judge. The instant prosecution was by the Whiteside County State's Attorney's Office, which had absolutely no reason to know of the erroneous Lee County warrant.

When an officer makes a lawful custodial arrest of an occupant of a car, he may contemporaneously search the passenger compartment of the car and the contents of any containers therein. *People v. Bailey*, 159 Ill.2d 498, 639 N.E.2d 1278, 1280-81, 203 Ill.Dec. 459 (1994), *cert. den.*, *Bailey v. Illinois*, 513 U.S. 1157, 115 S.Ct. 1116, 130 L.Ed.2d 1080 (1995), relying on *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981).

Most importantly, as this arrest was made in good faith, the contraband the search revealed should not have been suppressed, even though it was later learned that the arrest warrant should have been recalled. *Arizona v. Evans*, 514 U.S. 1, 115 S.Ct. 1185, 1191-94, 131 L.Ed.2d 34 (1995). There, the officer stopped Evans for a traffic

violation. When Evans told the officer that his license was suspended, the officer ran a computer inquiry through a terminal in his patrol car which indicated there was an outstanding misdemeanor warrant for Evans' arrest. The officer arrested and handcuffed Evans. Evans dropped a cigarette, which smelled of marijuana. The police searched Evans' car and found marijuana under the passenger seat. When the police later notified the court of Evans' arrest, the court advised them that the arrest warrant had been quashed 17 days before the arrest. Evans argued that the good faith exception to the exclusionary rule did not apply because police error, not judicial error, caused his invalid arrest. This Court rejected that argument, and held that the marijuana should not have been suppressed.

The chief clerk of the court testified to the earlier quashing of the warrant. Although a court clerk was supposed to inform the sheriff's office of that so the warrant could be removed from the computer records, that had not been done.

Evans held that the exclusionary rule should not be applied when it does not result in appreciable deterrence. 115 S.Ct. 1191. This Court there relied strongly upon *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), which held that the exclusionary rule does not bar evidence obtained by an officer who relied in objective good faith on a search warrant which was ultimately found to be unsupported by probable cause.

Evans stated that there was no sound reason to apply the exclusionary rule to deter judicial misconduct in issuing warrants. The rule was designed to deter police

misconduct, not punish judicial errors. No evidence suggests that judges tend to ignore or subvert the Fourth Amendment or are so lawless as to require the extreme sanction of evidence exclusion. There is no reason to believe that excluding evidence seized pursuant to a warrant would have a significant deterring effect on judges. *Evans*, 115 S.Ct. 1191.

Evans decided that when, as here, the officer's conduct is objectively reasonable, excluding resulting evidence does not appreciably further the ends of the exclusionary rule. 115 S.Ct. 1191. It noted a specific reason for not applying the exclusionary rule in such a situation, that to do so might make an officer less willing to do his duty in the future, *i.e.*, arrest a person for whom he is advised through proper channels that there is an arrest warrant pending. 115 S.Ct. 1192.

Evans held that the evidence seized pursuant to the arrest should not be excluded if court employees were responsible for the erroneous computer record showing the warrant. The exclusionary rule means to deter police misconduct, not court employees' mistakes. 115 S.Ct. 1193. There was no police misconduct here.

Evans also stated that there was no evidence that court employees are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these persons requires applying the extreme sanction of exclusion. 115 S.Ct. 1193. Similarly, there was absolutely no evidence here that prosecutors are so inclined.

If a court clerk is responsible for the erroneous entry of the warrant in the police computer, excluding the evidence would not alter the behavior of the arresting

officer. *Evans*, 115 S.Ct. 1193. This Court concluded that there is a categorical exception to the exclusionary rule for clerical errors of court employees when, as here, there is no indication that the arresting officer was not acting reasonably in relying on the police computer record. *Evans*, 115 S.Ct. 1194.

Evans made clear that whether the exclusionary rule should be applied in a given case is an issue quite separate from the question whether the Fourth Amendment rights of the party invoking the exclusionary rule were violated by police conduct. 115 S.Ct. 1191, 1192-93. As discussed, *Evans* refused to apply the exclusionary rule to "misconduct" by judges. Any misconduct here was judicial misconduct. The Lee County assistant state's attorney failed through an oversight to inform the judge when Respondent appeared in court there on July 17, 1997, of an outstanding warrant for the Respondent's arrest. (C. 45-46) The Lee County docket sheets show that, on June 6, 1997, an arrest warrant was to issue and did issue on June 23, 1997, with a copy of the arrest warrant filed. (C. 48; People's Exhibit 1) The Lee County judge stated that he was not told of the warrant by the state's attorney's office and would have recalled the warrant had he been informed of it. (C. 53-54) He could have learned of that warrant either from the docket sheet or from the assistant state's attorney. His failure to learn of and recall the warrant was an honest oversight.

The fact is that the warrant was not recalled. It remained in effect. The arresting officer learned of it in good faith when he ran a radio check of Respondent. (R. 11-12, 24, 25) The Respondent admitted that the officer

acted in good faith. (R. 59-60, 72-73) The warrant remained in effect not because of police error, but rather because of judicial error. In such a case, *Evans* mandates that evidence found in the search pursuant to the arrest not be excluded.

It bears emphasis, as noted, that *Evans* mandates that the exclusionary rule not be used when it does not result in appreciable deterrence. 115 S.Ct. 1191. The appellate court in this case overlooked that point in its reliance on *People v. Turnage*, 162 Ill.2d 299, 642 N.E.2d 1235, 205 Ill.Dec. 118 (1994), which predates *Evans*. *Turnage* held that the good faith exception to the exclusionary rule did not prevent suppression of evidence from a search incident to arrest pursuant to an invalid arrest warrant. However, that warrant was invalid at its source. *Turnage*, 642 N.E.2d 1241.

Turnage placed undue reliance on *Whiteley v. Warden, Wyoming State Penitentiary*, 401 U.S. 560, 91 S.Ct. 1031, 28 L.Ed.2d 306 (1971), which held that officers violated the Fourth Amendment in arresting the Respondent pursuant to a radio bulletin that there was a warrant for his arrest. As that warrant was not based on probable cause, *Whiteley* held that the arrest was unconstitutional and that the evidence seized as an incident thereto was to be suppressed under the exclusionary rule. *Evans* stated that, while *Whiteley* retained relevance in determining whether the police violated the Fourth Amendment, ". . . its precedential value regarding application of the exclusionary rule is dubious." 115 S.Ct. 1192. Also, Justice Koehler notes in her dissent in this case that *Turnage* requires that the judge look to the source of the warrant

when an officer arrests a person based on a warrant obtained elsewhere. There, the state's attorney of the county in which Turnage was arrested was responsible for issuing the warrant for Turnage's arrest, which should not have been issued in the first instance. Here, the situation is quite different. This arrest warrant was properly issued in Lee County because Respondent did not appear in court. It was proper at its source, the stated focus of *Turnage* in deciding whether to suppress the evidence.

The deterrence rationale for the exclusionary rule does not exist here. *Evans* held that the exclusionary rule is not applied to deter misconduct by judges in issuing warrants, but only to deter police misconduct. *Evans*, 115 S.Ct. 1191. True, *Turnage* looks also to the role of the prosecutor's office as a member of the law enforcement team in obtaining the warrant. That office cannot objectively believe a warrant to be valid if it knew or should have known that the warrant was invalid. *Turnage*, 642 N.E.2d 1241. However, in this case, the Whiteside County State's Attorney's Office had nothing to do with the issuance of the Lee County arrest warrant and nothing to do with the failure to recall it. The law enforcement team in this case consisted of the Whiteside County State's Attorney's Office and the Whiteside County deputy who arrested Respondent. Neither of them had anything to do with Respondent's Lee County arrest warrant.

The Whiteside County State's Attorney's Office was not in league with the Lee County State's Attorney's Office. This was not some type of multi-county investigation of Respondent. A state's attorney is elected for each county.

Ill.Const., 1970, art. VI, sec. 19. Each state's attorney is to prosecute criminal activities in the circuit court for his county. 55 ILCS 5/3-9005(a)(1). The law presumes that the state's attorney will act under such a heavy sense of duty to enforce the laws that he will commit no wrongful act. *People ex rel. Kunstman v. Shinsaku Nagano*, 389 Ill. 231, 59 N.E.2d 96, 105 (1945). The Whiteside County State's Attorney is presumed to have acted correctly, and nothing rebuts that in this case in which he had no connection with the erroneous arrest warrant.

This Court recently has stated that the exclusionary rule is prudential rather than constitutionally mandated. *Pennsylvania Board of Probation and Parole v. Scott*, 524 U.S. 357, 118 S.Ct. 2014, 2019, 144 L.Ed.2d 344 (1998). Thus, the exclusionary rule is applicable only when its deterrent benefits outweigh its substantial social costs. *Scott*, 118 S.Ct. 2019. As there was no prosecutorial or judicial misconduct here regarding the non-recalled warrant nor evidence that prosecutors or judges were inclined to ignore or support the Fourth Amendment, there were no appreciable deterrence benefits here. However, there was substantial social cost. One who did, indeed, possess illegal drugs is being allowed to completely escape criminal liability for that.

Scott also held that the costly toll of the exclusionary rule on truth seeking and law enforcement objectives has resulted in a high obstacle for one who seeks application of the exclusionary rule. 118 S.Ct. 2020. Respondent has met no high obstacle in gaining the application of the exclusionary rule here where good faith was rampant, whether one looks to the conduct of the arresting officer

or the conduct of the prosecuting state's attorney or the conduct of the assistant state's attorney and judge in the other county, who erroneously failed to recall the arrest warrant for Respondent.

In sum, the *Evans* good faith exception to the exclusionary rule applies here. The exclusionary rule with its purpose of deterrence would have no such effect here, as the Whiteside County deputy and the Whiteside County State's Attorney acted in complete good faith. Neither of them knew, or had any reason to know, that the Lee County arrest warrant was erroneous. They were not working together on this case with the Lee County State's Attorney. They were not part of a law enforcement team with the Lee County State's Attorney. Too, the erroneous, initially valid warrant existed in Lee County more through the fault of the Lee County judge than through the fault of the Lee County State's Attorney. It was the judge who had the authority to recall the warrant, not the prosecutor. The judge had the docket sheet before him, so he had the ability to know of the warrant. In any case, it existed in complete good faith. The exclusionary rule is not meant to deter judicial misconduct. The exclusionary rule has been erroneously applied here. *Certiorari* should be granted and the Appellate Court should be reversed.

CONCLUSION

For the aforementioned reasons, Petitioner, the People of the State of Illinois, respectfully requests that this Honorable Court grant *Certiorari*, and reverse the decision of the Illinois Appellate Court.

Respectfully submitted,

JOHN X. BRESLIN
Deputy Director
ROBERT M. HANSEN
Staff Attorney
State's Attorneys Appellate Prosecutor
628 Columbus St., Ste. 300
Ottawa, Illinois 61350
(815) 434-7010

GARY SPENCER
State's Attorney
Whiteside County Courthouse
Morrison, Illinois 61270
(815) 772-7201

JAMES E. RYAN
Attorney General of Illinois

JOEL D. BERTOCCHI
Solicitor General of Illinois

WILLIAM L. BROWERS
Counsel of Record
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2569

Counsel for Petitioner

APPENDICES

APPENDIX A

No. 3-98-0092

IN THE
APPELLATE COURT OF THE STATE OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 1999

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

v.

SCOTT D. BOYER,

Defendant-Appellee.

Appeal from the Circuit Court of the 14th
Judicial Circuit Whiteside County, Illinois, No. 97-CF-261
Honorable Dan A. Dunagan, Judge Presiding.

Justice LYTTON delivered the opinion of the court: **Publ. In Full**

After being arrested for possession of cannabis with intent to deliver (720 ILCS 550/5(d) (West 1996)), defendant Scott D. Boyer filed a motion to suppress evidence (725 ILCS 5/114-12 (West 1996)), and the circuit court granted the motion. The State certified that the suppression order substantially impaired its ability to prosecute the case (see *People v. Young*, 82 Ill. 2d 234, 247, 412 N.E.2d 501, 507 (West 1996)) and filed a notice of appeal

pursuant to Supreme Court Rule 604(a)(1) (134 Ill.2d R. 604(a)(1)). We affirm.

A circuit court's ruling on a motion to suppress evidence generally is subject to reversal only if manifestly erroneous. *People v. Krueger*, 175 Ill. 2d 60, 64, 675 N.E. 2d 604, 607 (1996). This case, however, involves the circuit court's application of the law to uncontroverted facts. Consequently, this case presents a question of law for which we conduct *de novo* review. *Krueger*, 175 Ill. 2d at 64, 675 N.E.2d at 607.

At the hearing on the motion to suppress, Deputy Glen Estrada testified that he stopped defendant for speeding on August 10, 1997. Upon checking defendant's driver's license number, Estrada was informed that there was a warrant for defendant's arrest, possibly for a failure to appear on a DUI case. Defendant protested that the matter had already been cleared up, but Estrada placed defendant under arrest. The deputy then searched defendant's car and found a green leafy material that appeared to be cannabis. Defendant did not consent to the search.

Defendant testified that he was unaware that an arrest warrant had been issued in his DUI case, which was pending in Lee County. Defendant had appeared before Judge Martin Hill and was assigned a court date of August 20, 1997, prior to being stopped by Deputy Estrada.

After admitting People's Exhibit 1, an arrest warrant dated June 23, 1997, signed by circuit judge David T. Fritts, the trial court denied the motion to suppress:

> "On its face, the warrant was valid at the time of the defendant's arrest and the mere fact that the defendant was unaware of the reason for it does not show that there had been no probable cause for it to have been issued. If it were shown that the warrant was erroneously issued or that it should have been recalled, the arrest would be unlawful and the evidence suppressed. [Citation.] Because that has not been shown, however, the Motion to Suppress is denied."

Defendant filed a motion to reconsider. Attached to the motion was an affidavit signed by William Brozovich, assistant state's attorney in Lee County. Brozovich stated under oath that (a) on June 6, 1997, Scott Boyer failed to appear for his DUI case, and the court ordered that a warrant issue with a $4000 bond; (b) on June 23, the warrant actually issued; (c) on June 30, the Lee County State's Attorney's Office filed a notice to appear, requiring Boyer to appear on July 17; (d) on July 17, defendant did appear, was informed of his rights, pled not guilty, and was assigned a status date of August 20; (e) the judge should have been informed that a warrant had issued, and the State's Attorney's Office failed to so inform the judge; and (f) this was an honest oversight.

Defendant also filed an affidavit signed by Martin Hill, associate judge sitting in Lee County. Judge Hill stated that (a) Scott Boyer appeared before him on July 17, 1997; (b) Hill continued the case to August 20 for status; (c) Hill was not informed by the Lee County State's Attorney's Office of the fact that there was an outstanding warrant; and (d) had he been so informed, Hill would have recalled the warrant.

On appeal the State raises one issue: "Can an officer search a car and seize contraband therein pursuant to the arrest of the driver on a warrant later found to have been erroneously not been recalled?"

I.

The fourth amendment of the United States Constitution provides that:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const., amend. IV.[1]

While the fourth amendment provides no sanction for a violation of its terms, the exclusionary rule is a judicially created remedy designed to safeguard against future violations. *Arizona v. Evans*, 514 U.S. 1, 10, 131 L. Ed. 2d 34, 44, 115 S.Ct. 1185, ___ (1995), citing *United States v. Leon*, 468 U.S. 897, 906, 82 L. Ed. 2d 677, 687, 104 S.Ct. 3405, ___ (1984).

---

[1] Illinois has a similar constitutional provision (Ill. Const. 1970, art. I, § 6), which contains "nearly identical" language (*Krueger*, 175 Ill. 2d at 65, 675 N.E.2d at 607) that is to be interpreted in the same manner as the fourth amendment (*People v. Hoskins* (1984), 101 Ill. 2d 209, 218, 461 N.E.2d 941, 945 (1984)).

In *People v. Decuir*, 84 Ill. App. 3d 531, 533, 405 N.E.2d 891, 893 (1980), this court held that where an officer arrests a person based on a warrant from another county, and unbeknownst to the officer the warrant had been quashed and recalled, the arrest is unlawful and evidence seized pursuant thereto must be suppressed. Still, in deciding this case, we are mindful that *Decuir* was decided before the development of the good faith exception to the exclusionary rule. See 725 ILCS 5/114-12(b) (West 1996); *Leon*, 468 U.S. 897, 82 L. Ed. 2d 677, 104 S. Ct. 3405.

In *Arizona v. Evans*, the Supreme Court applied good faith analysis to a situation where a court clerk failed to inform the sheriff's office that an arrest warrant had been quashed, defendant was then stopped for speeding and arrested pursuant to the quashed warrant, and contraband was discovered and seized. *Evans*, 514 U.S. at 4-5, 131 L. Ed. 2d at 40, 115 S. Ct. at ___. Writing for the majority, Chief Justice Rehnquist stated that the exclusionary rule was historically designed to deter police misconduct rather than mistakes by court employees (*Evans*, 514 U.S. at 14, 131 L. Ed. 2d at 46-47, 115 S. Ct. at ___) and application of the exclusionary rule is unwarranted where it would not result in appreciable deterrence (*Evans*, 514 U.S. at 11, 131 L. Ed. 2d at 44, 115 S. Ct. at ___). Thus, the Court created "a categorical exception to the exclusionary rule for clerical errors of court employees." *Evans*, 514 U.S. at 16, 131 L. Ed.2d at 47, 115 S. Ct. at ___.

In the case at bar, the State and defendant agree that defendant's arrest warrant should have been recalled and

that *Evans* is determinative. The parties disagree, however, as to how *Evans* applies to the facts presented here. The State asserts that the failure to recall defendant's arrest warrant is attributable to Judge Hill, as a "court employee". Defendant contends that the error was committed by the prosecutor.

In resolving this issue, we are cognizant that in many counties and jurisdictions, the clerk bears the primary responsibility for informing a judge when a warrant is outstanding. However, as a matter of sound appellate practice, "this court's review is limited to evidence in the record on appeal" (*Thomas v. Powell*, 289 Ill. App. 3d 143, 147, 681 N.E.2d 145, 147 (1997)), and the record before us shows that a different procedure is apparently employed in Lee County.

The uncontested affidavit of the Lee County assistant state's attorney states (1) when defendant appeared on the DUI charge in Lee County, on July 17, 1997, the existence of a warrant "should have been brought to the attention of Judge Martin D. Hill so that the warrant could have been addressed at that time," and (2) failure to so inform the judge constituted "an honest oversight on the part of the Lee County State's Attorney's Office." The affidavit of Judge Hill states,

> "I was not informed by the Lee County State's Attorney's Office of the fact that there was an outstanding warrant * * *. Had I been informed of the existence of the warrant I would have recalled it due to the Defendant's appearance in my court."

Based on this record, we conclude that an error resulting in the failure to recall defendant's arrest warrant was

committed by the prosecutor.[2]

II.

Yet to be answered is whether a prosecutor falls within the Supreme Court's category of "court employees," upon whom deterrent effect of suppression would have no effect. *Evans*, 514 U.S. at 16, 131 L. Ed. 2d at 47, 115 S. Ct. at ___. In making this determination, we turn to the Court's description of this category of persons:

> "Because court clerks are not adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime [citation], they have no stake in the outcome of particular criminal prosecutions." *Evans*, 514 U.S. at 15, 131 L. Ed. 2d 47, 115 S. Ct. at ___.

Unlike court clerks, prosecutors are part of the law enforcement team; they are engaged in the competitive enterprise of ferreting out crime; they do have a stake in the outcome of particular criminal prosecutions. In light of the Supreme Court's "law enforcement team" analysis, we conclude that the exclusionary rule should apply to evidence seized as a result of a prosecutor's failure to get a stale warrant recalled.[3]

---

[2] Once again, we wish to stress that our conclusion is based upon procedures employed in Lee County and the record before us; accordingly, this decision should not be construed to govern all errors in recalling warrants across Illinois.

[3] It would appear that the two *Evans* dissenters would also reach this result. See *Evans*, 514 U.S. at 21, 131 L. Ed. 2d at 51, 115 S. Ct. at ___ (Stevens, J., dissenting) (deterrent purpose

(continued...)

Our conclusion is supported by *People v. Turnage*, 162 Ill. 2d 299, 642 N.E.2d 1235 (1994), where the Illinois Supreme Court held that a warrant issued after defendant had posted bond was "invalid" and the resulting arrest was "illegal." *Turnage*, 162 Ill. 2d at 306, 642 N.E. 2d at 1238. Although executed by an officer who was unaware of the circumstances surrounding its issuance, the warrant was obtained by employees of the State's Attorney's Office, who were "members of the law enforcement team." *Turnage*, 162 Ill. 2d at 311, 642 N.E.2d at 1240-41. Holding that the good faith exception would not apply, the court explained:

> "suppression of the evidence in such a case would further the deterrent purposes of the exclusionary rule. Specifically, exclusion of evidence where the State's Attorney * * * may be charged with knowledge of the [invalid] nature of a warrant will deter fishing expeditions and provide an incentive to keep accurate records." *Turnage*, 162 Ill. 2d at 312-13, 642 N.E.2d at 1241.

In light of the holdings in *Evans* and *Turnage*, we conclude that applying the exclusionary rule here will appreciably deter similar constitutional violations in the future.[4]

---

[3] (...continued)
extends "to law enforcement as a whole"); and *Evans*, 514 U.S. at 29, 131 L. Ed. 2d at 56, 115 S. Ct. at ___ (Ginsburg, J., dissenting, joined by Stevens, J.) (asserting it is "artifical" to distinguish between court clerk and police mistakes).

[4] The prosecutor's characterization of his error as an "honest oversight" does not preclude application of the exclusionary rule. The purpose of the exclusionary rule is deterrence.
(continued...)

III.

Notwithstanding the record on appeal, and the "law enforcement team" analysis found in *Evans* and *Turnage*, the State argues that the failure to recall defendant's warrant constituted judicial error because (a) Judge Hill forgot the warrant he issued on June 23, and (b) he would have remembered its existence if he had looked at the docket sheet. However, upon reviewing the record (*Thomas*, 289 Ill. App. 3d at 147, 681 N.E.2d at 147), we find that the warrant was signed by a judge other than Judge Hill. Moreover, nothing in the record indicates that the docket sheet cited by the State was before Judge Hill on July 17, 1997. As appellant, the State has the duty to present an adequate record supporting its claims of error. *People v. Schuppert*, 217 Ill. App. 3d 715, 717, 577 N.E.2d 828, 829 (1991).

However, bypassing flaws in the record and acknowledging the virtual certainty that Judge Hill examined a docket sheet to ensure the prerequisites for issuing a warrant were satisfied (134 Ill.2d R. 556(a)), we still find that suppression is appropriate. The majority in *Evans*, as well as the concurring and dissenting justices, all indicated that where an error is committed by a court

---

[4] (...continued)
(*Evans*, 514 U.S. at 14, 131 L. Ed. 2d at 46-47, 115 S. Ct. at ___; *Turnage*, 162 Ill. 2d at 312, 642 N.E.2d at 1241), which applies not only to intentional and reckless acts, but also to negligent acts. A premise underlying all negligence law is that imposing liability can create an incentive to act with greater care, and suppressing evidence in a case such as this will provide an incentive for prosecutors to keep accurate records. *Turnage*, 162 Ill. 2d at 312-13, 642 N.E.2d at 1241.

employee, it is still necessary to determine whether a second, deterrable constitutional error was committed by a member of the law enforcement team. See *Evans*, 514 U.S. at 15-16, 131 L. Ed. 2d 47, 115 S. Ct. at ___ (after concluding that an error was committed by a court employee, the majority considered whether the police also acted unreasonably); *Evans*, 514 U.S. at 16-17, 131 L. Ed. 2d at 48, 115 S. Ct. at ___ (O'Connor, J., concurring, joined by Souter and Breyer, JJ.) (a court employee's mistake may not be the only error); *Evans*, 514 U.S. at 21, 131 L. Ed. 2d at 51, 115 S. Ct. at ___ (Stevens, J., dissenting) (law enforcement officials stand in the best position to monitor clerical errors and influence procedures to prevent such errors); *Evans*, 514 U.S. at 16-17, 131 L. Ed. 2d at 48, 115 S. Ct. at ___ (Ginsburg, J., dissenting, joined by Stevens, J.) (distinction between police conduct and judicial conduct loses force where error arises from inattentive recordkeeping rather than exercise of discretionary judicial function).

Thus, even if the judge erred by failing to notice the issuance of the warrant on the docket sheet, the record still shows an "oversight on the part of the Lee County State's Attorney's Office" that resulted in the failure to recall a stale warrant for defendant's arrest. As indicated in *Turnage*, 162 Ill. 2d at 312-13, 642 N.E.2d at 1241, suppression will serve to deter similar prosecutorial errors in the future.

IV.

Finally, the State argues that suppression is unwarranted simply because the officer's search was made

pursuant to a lawful stop. This claim is contrary to the position taken by the prosecution in the circuit court: "Your Honor, this is a search incident to an arrest." Deputy Estrada testified that except for the minor traffic stop and the warrant, he had no reason to believe that there was any other type of illegal activity. In the absence of probable cause, stopping a motorist for a traffic violation does not justify a search of the vehicle. See *People v. Penny*, 188 Ill. App. 3d 499, 544 N.E.2d 1015 (1989).

The judgment of the circuit court of Whiteside County is affirmed.

Affirmed.

HOMER, J., concurs and KOEHLER, J., dissents.

No. 3-98-0002

IN THE
APPELLATE COURT OF THE STATE OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 1999

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

v.

SCOTT D. BOYER,

Defendant-Appellee.

Appeal from the Circuit Court of the 14th
Judicial Circuit Whiteside County, Illinois, No. 97-CF-261
Honorable Dan A. Dunagan, Judge Presiding.

Justice KOEHLER, dissenting: **Publ. In Full**

The State contends that an officer may search a car and seize contraband found within pursuant to the arrest of the driver on a warrant later found to have been erroneously not recalled. The majority in affirming the Whiteside County circuit court's suppression of this evidence concludes that the exclusionary rule should apply to the evidence seized because a Lee County prosecutor failed to notify the Lee County circuit court of the outstanding warrant at the defendant's court appearance prior to his arrest. In so holding, the majority focused its

analysis on the prosecutor's duty as part of the law enforcement team.

However, the appropriate analysis where an officer arrests a suspect based upon a warrant obtained by someone other than the arresting officer is to determine whether the warrant was valid at its *source*. *People v. Turnage*, 162 Ill.2d 299, 312, 642 N.E.2d 1235, 1241 (1994) (emphasis added) (holding that issuing a second arrest warrant on identical charges after the defendant has been arrested and released on bond produces a warrant that is invalid *ab initio*). The appropriate focus for such an inquiry is not on the conduct of the arresting officer, but on the conduct of those who *obtained* the warrant and on the police department that informed the executing officer of its continued vitality. *Turnage*, 162 Ill.2d at 312, 642 N.E.2d at 1241. (emphasis added). If facts are available from which a court of review can determine whether those *obtaining* the warrant—either the State's Attorney's office or the police department—was aware or should have been aware that the warrant was invalid at its *source*, then an objective belief that the warrant was valid could not be reasonably held. *Turnage*, 162 Ill.2d at 312, 642 N.E.2d at 1241 (emphasis added).

In his affidavit, Lee County Assistant State's Attorney William Brozovicy stated that the origin of the defendant's arrest warrant was the defendant's failure to appear on a prior DUI case. Consequently, those who sought the warrant and the circuit court judge who issued the warrant had an objectively reasonable belief that the warrant was valid at its source. The defendant does not claim that the source of the warrant—his failure

to appear—was invalid or that the State lacked probable cause.

Whiteside County Deputy Glen Estrada testified that when he stopped the defendant for speeding, the department informed him of an arrest warrant, possibly for a failure to appear on a DUI offense. Estrada testified that the warrant was in the computer and that he relied on it. The defendant does not allege, nor does the record suggest, that the police how informed Estrada of the warrant were aware or should have been aware that the warrant should have been recalled or that they acted in bad faith. Evidently, the police who attested to the arrant's continued vitality had an objectively reasonable belief in its validity.

In sum, under the *Turnage* analysis, when Whiteside County Deputy Estrada arrested the defendant based upon the Lee County warrant that was valid at its source, and neither Estrada nor his police department was aware of any subsequent invalidity of the warrant, the exclusion was not necessary because the requirements for a good-faith exception are met. *Turnage*, 162 Ill. 2d at 313, 642 N.E.2d at 1241. (citing *United States v. Leon*, 468 U.S. 897, 924, 82 L. Ed. 2d 677, 699, 104 S. Ct. 3405, 3421 (1984)).

However, the majority determined that prosecutors are part of "the law enforcement team" against whom the deterrent effect of suppression must be applied. In its attempt to find support for its determination, the majority cites two dissenting opinions filed in *Arizona v. Evans*, 514 U.S. 1, 131 L. Ed. 2d 34, 104 S. Ct. 1185 (1995). Although our Supreme Court in *Turnage*, 162 Ill.

2d at 311, 642 N.E.2d at 1240-41, lent some support for the majority's conclusion that State's Attorneys are part of the "law enforcement team," *Turnage* limited the exclusionary rule's application to a warrant invalid at its source and refused to extend the rule's application to actors anywhere along the line. After all, the majority's application in the present case is contrary to the reasoning of *Leon*, 468 U.S. 897, 924, 82 L. Ed. 2d 677, 699, 104 S.Ct. 3405, 3421 (1984). First, the exclusionary rule was historically designed as a means of deterring police misconduct, *Leon*, 468 U.S. at 916, 821 L. Ed. 2d at 694, 104 S. Ct. at 3417, not mistakes by the State's Attorney's office. Second, the defendant offers no evidence that State's Attorney's offices are inclined to ignore or subvert the fourth amendment or that lawlessness among State's Attorneys requires application of the extreme sanction of exclusion. *Leon*, 468 U.S. at 916, 82 L. Ed. 2d at 694, 104 S. Ct. at 3417. Third, and most important, there is no basis for believing that application of the exclusionary rule in the present circumstances will have a significant effect on State's Attorneys or an arresting officer. *Leon*, 468 U.S. at 916, 82 L. Ed. 2d at 694, 104 S. Ct. at 3417. Even if the Lee County State's Attorney's office was responsible for the erroneous entry on the police computer, and for purposes of argument only, the State's Attorney's office is part of the law enforcement team, the application of the exclusionary rule could not be expected to alter Estrada's behavior. As the Whiteside County circuit court concluded, Estrada acted in good faith. Moreover, he would have been derelict in his duty if he failed to arrest. Instead, he acted objectively and reasonably when he relied upon the police computer record.

Application of the *Leon* framework supports a conclusion that (1) Estrada's conduct was objectively reasonable, (2) he acted as a reasonable officer would and should act in similar circumstances, (3) excluding the evidence would not affect his future conduct except to make him less willing to do his duty, and (4) excluding the evidence will not further the ends of the exclusionary rule—deterring police misconduct—in any appreciable way. *Leon*, 468 U.S. at 919-920, 82 L. Ed. 2d at 696-97, 104 S. Ct. at 3419; *Massachusetts v. Sheppard*, 468 U.S. 981, 990-91, 82 L.Ed.2d 737, 745, 104 S. Ct. 3424, 3429 (1984). In sum, marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a search warrant, valid at its source but subsequently invalidated, cannot justify the substantial costs of exclusion. *Leon*, 468 U.S. at 922, 82 L.Ed.2d at 698, 104 S. Ct. at 3420.

In further support of this conclusion, I note that the Illinois legislature recognized and codified the *Leon* good-faith exception in sections 114-12(b)(1) and (b)(2) of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-12 (b)(1), (b)(2) (West 1996)). Section 114-12(b)(1) provides that a court should not suppress otherwise admissible evidence if a police officer seized the evidence in good faith. Section 114-12(b)(2)(i) sets forth the definition of "good faith" applicable to the case at bar: "'Good faith' means whenever a peace officer obtains evidence; (i) pursuant to a search or an arrest warrant obtained from a neutral and detached judge, which warrant is free from obvious defects other than non-deliberate errors in preparation and contains no material misrepresentation by any agent of the State, and the officer reasonably be-

lieved the arrant to be valid." 725 ILCS 114-12(b)(2)(i) (West 1996). The actions of the police in this case meet this definition of good faith. The record reveals that the warrant issued at the order of a neutral and detached judge after the defendant failed to appear in his Lee County DUI case; the warrant was free from obvious defects; the warrant contained no material misrepresentations; and the police could have reasonably believed the warrant to be valid.

Consequently, I cannot join the majority judgment affirming the circuit court's decision, and respectfully dissent.

APPENDIX B

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
87905 SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

October 6, 1999

Mr. John X. Breslin
State's Attorneys Appellate Prosecutor
P.O. Box 654
Ottawa, IL 61350

No. 87905 – People State of Illinois, petitioner, v. Scott D. Boyer, respondent. Leave to appeal, Appellate Court, Third District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 1999.

(2)

No. 99-1133

Supreme Court, U.S.
FILED
MAR 13
CLERK

In The
Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

v.

SCOTT D. BOYER,
Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MICHAEL A. LANCASTER
(COUNSEL OF RECORD)
KEVIN D. SEFTON
MILLER, LANCASTER
& WALKER, P.C.
15 E. 3RD Street
P.O. Box 535
Sterling, Illinois 61081
(815) 625-0600
Counsel for Respondent

1899

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

OPPOSITION TO PETITION FOR CERTIORARI 1

COUNTER STATEMENT OF THE CASE ... 3

REASONS FOR DENYING THE WRIT 4

I. Under the test established by this Court in *Arizona v. Evans*, exclusion of evidence obtained as the result of prosecutorial error in failing to have a warrant recalled is proper. 4

A. The error committed in this case was prosecutorial error, not judicial error. 5

B. Prosecutors are part of the law enforcement team, engaged in the competitive enterprise of ferreting out crime, with a stake in the outcome of particular criminal prosecutions. 6

C. Enforcement of the exclusionary rule when evidence is improperly obtained as a result of prosecutorial error will have a deterrent effect on prosecutorial conduct. 8

PAGE

II. The good faith exception to the exclusionary rule has been addressed by the Illinois Legislature, is a question of independent State law in Illinois, and should not be addressed by this Honorable Court. 10

CONCLUSION 13

TABLE OF AUTHORITIES

United States Supreme Court Cases PAGE(S)

Arizona v. Evans, 514 U.S. 1, 115 S. Ct. 1185, 131 L.Ed.2d 34 (1995) ..... *passim*

United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405, 82 L.Ed.2d 677 (1984) 4, 10

Other Cases

People v. Boyer, 305 Ill.App.3d 374, 713 N.E.2d 655 (3rd Dist. 1999) ..... *passim*

People v. Green, 179 Ill.App.3d 1, 535 N.E.2d 413 (1st Dist. 1989) 7

People v. Krueger, 175 Ill.2d 60, 675 N.E.2d 604 (1997) 10

People v. Smith, 152 Ill.2d 229, 640 N.E.2d 858 (1992) 7

United States v. Tarazon-Silva, 960 F.Supp. 1152 (W.D. Tex 1997) 8

People v. Thompkins, 121 Ill.2d 401, 521 N.E.2d 38 (1988) 7

People v. Thompson, 88 Ill.App.3d 375, 410 N.E.2d 600 (4th Dist. 1980) 6

People v. Turnage, 162 Ill.2d 299, 642 N.E.2d 1235 (1994) 2, 9, 10, 11

PAGE(S)

People v. Vaughn, 49 Ill.App.3d 37, 363 N.E.2d 879 (5th Dist. 1977) 6

People v. Williams, 161 Ill.2d 1, 641 N.E.2d 296 (1994) 7

Additional Authority

Ill. Const., 1970, art. VI, sec. 18 6

55 ILCS 5/3-9001 (West 1997) 7

55 ILCS 5/3-9004 (West 1997) 7

725 ILCS 5/114-12 (West 1997) 2, 10, 11

OPPOSITION TO PETITION FOR CERTIORARI

This Honorable Court should deny the Petition because the case decided below was a very narrow case with very minor precedential effect. The case was so narrow that the court for the Third Appellate District of Illinois made a point of indicating how narrow its decision was in footnote 2 of its decision concerning this case, and also within the decision itself at *People v. Boyer*, 305 Ill. App. 3d 374, 378, 713 N.E. 2d 655, 658 (3rd Dist. 1999). There are only two rules of law that can be taken from the Third District's decision; First, when applying the test set down in *Arizona v. Evans*, 514 U.S. 1, 115 S. Ct. 1185, 131 L. Ed. 2d 34 (1995), to determine whether or not evidence should be suppressed as the result of an improper warrant, prosecutors, unlike court clerks and judges, are part of the law enforcement team engaged in the often competitive enterprise of ferreting out crime with a stake in the outcome of particular criminal prosecutions. *Boyer*, 305 Ill. App. 3d at 379, 713 N.E. 2d at 658. Second, when considering whether or not the good faith exception to the exclusionary doctrine applies, the good faith of the parties procuring the warrant and holding out its continued validity is at issue, not the good faith of the officer, who completely ignorant to the circumstances surrounding the warrant, serves the warrant. *Boyer*, 305 Ill. App. 3d at 379, 713 N.E. 2d at 659.

The Third Appellate District of Illinois was correct in its determination that the error committed in this case was prosecutorial error, that prosecutors are part of the law enforcement team under the *Evans* analysis, and that there would be a deterrent effect in suppressing evidence improperly obtained due to prosecutorial error. The record supports the fact that this was an instance of prosecutorial error given the procedures followed in Lee

County for recalling warrants in circumstances such as Scott Boyer's. The State's argument that this was judicial error and that the judge had the information necessary to notice the outstanding warrant in front him at the time is unsupported by the record. The lack of support for the State's contention is mentioned by the Third District Appellate Court in *Boyer*, 305 Ill. App. 3rd at 380, 713 N.E. 2d 655 at 659. In our adversarial system, prosecutors are certainly not like the impartial judges and clerks of the court system. They are members of the law enforcement team with a stake in the outcome of particular criminal prosecutions. Finally, as the Third District Court of Appeals for the State of Illinois in footnote 4 of its decision pointed out, in this case, imposing the exclusionary rule will provide prosecutors with an incentive to keep accurate records. *Boyer*, 305 Ill. App. 3rd at 379, 713 N.E. 2d at 659.

The decision concerning the good faith exception to the exclusionary doctrine is an independent question of Illinois State Law and should not be reviewed by this court. The Illinois legislature has codified the good faith exception to suppression of evidence at 725 ILCS 5/114-12 (West 1997). This Illinois statute defines the good faith exception to suppression of evidence in Illinois. Further, the Third District relied on *People v. Turnage*, 162 Ill 2d 299, 642 N.E.2d 1235 (1994), Illinois case law, in evaluating the good faith exception arguments made to it. The Illinois legislature has chosen to define the amount of good faith it will extend law enforcement in protecting the fruits of illegal searches. It is up to the Illinois Courts to interpret Illinois statutes. The good faith exception in this case is not an appropriate issue for federal review by this Court.

COUNTER STATEMENT OF THE CASE

The factual scenario presented by the Petitioner is a fair and accurate accounting of both the facts and the procedural disposition of this case.

REASONS FOR DENYING THE WRIT

I. Under the test established by this Court in *Arizona v. Evans*, exclusion of evidence obtained as the result of prosecutorial error in failing to have a warrant recalled is proper.

In *Arizona v. Evans*, 514 U.S. 1, 115 S. Ct. 1185, 131 L. Ed. 2d 34 (1995), this Court addressed whether or not application of the exclusionary rule would have a deterrent effect on court clerks when court clerks committed errors in failing to recall warrants. In reaching its decision, the Court used the law enforcement team analysis. *Id.*, 514 U.S. at 15, 115 S. Ct. at 1193. The Court determined the court clerks were more like the magistrate in *United States v. Leon*, 468 U.S 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984), than police officers because they are not "adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime [...] they have no stake in the outcome of particular criminal prosecutions." *Evans*, 514 U.S. at 15, 115 S. Ct. at 1193.

In the case at hand, the Third District Appellate Court for the State of Illinois correctly determined that this was a case involving prosecutorial error in failing to recall a warrant. This finding is supported by the uncontroverted testimony, via affidavit, of the Lee County State's Attorney's office and Judge Martin Hill in Lee County. *People v. Boyer*, 305 Ill. App. 3d 374, 378, 713 N.E. 2d 655, 658 (3rd Dist. 1999). The Third District Appellate Court was also correct in its assessment that prosecutors are part of the law enforcement team engaged in the often competitive enterprise of ferreting out crime. *Id.*, 305 Ill. App. 3d at 379, 713 N.E.2d at 658. Finally, because they are part of the law enforcement team, application of the exclusionary doctrine does have a deterrent effect on

prosecutors, even when the errors are due to negligence rather than intentional. *Id.*, 305 Ill. App. 3d at 379, 713 N.E. 2d at 659 (footnote 4).

A. The error committed in this case was prosecutorial error, not judicial error.

In determining who was responsible for the error that resulted in an arrest warrant being held out as valid in *Evans*, this Court looked to the testimony in the record of the Chief Clerk of the court in question, describing the process by which warrants were recalled in that jurisdiction. In *Evans*, from that testimony, it was evident the error was on the part of the court clerk, who failed to notify the Sheriff's office, as local custom dictated. 514 U.S. at 5, 115 S. Ct. at 1188. In the instant case, as indicated by the Third District Appellate Court for the State of Illinois, the uncontested local custom in Lee County at the time in question was for the State's Attorney to inform the sitting Judge that there was an outstanding warrant when a person appeared before the court. *People v. Boyer*, 305 Ill. App. 3d 374, 378, 713 N.E. 2d 655, 658 (3rd Dist. 1999). Given the procedure in Lee County, the judge depended upon the State's Attorney to notify the court of outstanding warrants that needed to be recalled. *Id.* This is not a case of judicial error as alleged by the State in its Petition for Writ. On page 9 of its Petition, the State points out that the Judge had the docket sheet in front of him and it was ultimately his responsibility to look at the docket sheet and recall the warrant. This contention is unsupported by the record. As the Third District Appellate Court for the State of Illinois pointed out, the record does not support the allegation that the docket sheet was in front of the judge. *Boyer*, 305 Ill. App. 3d at 379, 713 N.E. 2d at 659. Further, the allegation that it was ultimately the judge's responsibility to notice the outstanding warrant and recall it is contrary to the

uncontested affidavits from both Judge Martin Hill of Lee County and Assistant State's Attorney William Brozovitch of Lee County. Given the uncontroverted procedure in Lee County, the failure to recall the warrant can only be classified as prosecutorial error.

B. Prosecutors are part of the law enforcement team, engaged in the competitive enterprise of ferreting out crime, with a stake in the outcome of particular criminal prosecutions.

In *Arizona v. Evans*, this Court differentiated between two classes of actors in determining whose errors concerning mishandling of warrants should result in the application of the rule of exclusion. 514 U.S. at 15, 115 S. Ct. at 1193.

State's attorneys and their assistants are adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime, with a stake in the outcome of particular prosecutions, or if they are like neutral judges and magistrates. *Id.*

State's attorneys are not neutral parties like the magistrates, judges and court clerks considered in *Evans*. Unlike these judicial officials, the State's Attorney does not have a neutral interest in the outcome of criminal prosecutions. The State's Attorney is a constitutional officer, his office is part of the executive branch of state government, and all the powers exercised are executive powers. *People v. Thompson*, 88 Ill. App. 3d 375, 410 N.E.2d 600 (4th Dist. 1980); *People v. Vaughn*, 49 Ill. App. 3d 37, 363 N.E.2d 879 (5th Dist. 1977). A State's Attorney's role as an "officer of the court" is different from being a judicial officer. Judges are members of the Judicial branch. Court Clerks fall under their dominion. Illinois Constitution Article VI, §18 (West 1997). The State's Attorneys on the other hand are sworn in and given their power by the

Governor, the head of the executive branch. 55 ILCS 5/3-9001 (West 1997). As officers of the executive branch of government, the State's Attorney and the police both act to enforce the laws of the state. 55 ILCS 5/3-9004 (West 1997).

Given a State's Attorney's executive role, and his or her participation in an adversarial system, it is clear that State's Attorneys have an interest in ferreting out crime, and as the office responsible for prosecuting the crime, an interest in the outcome of each particular prosecution. The State's Attorney's role in the adversarial process as a competitor representing one side provides a critical distinction from judges and court clerks whose role in the same process is inherently neutral. The *Evans* Court found it critical that the Court Clerks in question had no particular interest in the outcome of criminal prosecutions. 514 U.S. at 15, 115 S. Ct. at 1193. The reason for the existence, in large part, of the office of State's Attorney requires the interest in the outcome of criminal prosecutions that supports treating the office of State's Attorney more like offices of Law Enforcement and less like neutral offices of judges and magistrates. It is the State's Attorney, after all, that finally determines which infractions will be prosecuted and plays the final role in enforcing the law. 55 ILCS 5/3-9004 (West 1997).

State's Attorneys also take an active role in investigating criminal activity with the police. For example, State's Attorneys and their assistants can participate in such activities as interrogation and the taking of statements. *See generally People v. Smith*, 152 Ill.2d 229, 604 N.E.2d 858 (1992); *People v. Green*, 179 Ill. App. 3d 1, 535 N.E.2d 413 (1st Dist. 1989); *People v. Williams*, 161 Ill.2d 1, 641 N.E.2d 296 (1994); *People v. Thompkins*, 121 Ill.2d 401, 521 N.E.2d 38 (1988). It is also not unheard of for prosecutors to assist police in

drafting and procuring search warrants. *United States v. Tarazon-Silva,* 960 F. Supp. 1152 (W.D.Tex. 1997).

The governmental position of the office of State's Attorney, its duties, its role in the adversarial judicial system, and the activities the office may engage in to investigate crime show that the office of State's Attorney is something quite different from the Judicial offices held in *Evans* to be beyond the application of the rule of exclusion. State's Attorneys and their assistants are adjuncts to the law enforcement team, often participating directly in the process, engaged in the often competitive enterprise of ferreting out crime. Further more, the State's Attorney has a stake in the outcome of each particular criminal prosecution.

C. Enforcement of the exclusionary rule when evidence is improperly obtained as a result of prosecutorial error will have a deterrent effect on prosecutorial conduct.

Evans stands for the proposition that as a rule, if a part of the law enforcement team makes an error resulting in an illegal search, there will be a deterrent effect if the rule of exclusion is applied to evidence obtained as a result of that search. 514 U.S. at 15, 115 S. Ct. at 1193. The Petitioner makes much ado about the fact that the search was conducted by an officer in another county. (Petition for Writ, 15-16). This, however, overlooks the fact that it is the People of the State of Illinois that are represented by all the prosecutors and police units involved, and not the People of Whiteside County or the People of Lee County exclusively. Also, it is imaginable that in a situation such as this one, evidence illegally obtained in Whiteside County by a Whiteside County officer, if not suppressed, could be used to violate a probation in Lee County.

The Illinois Supreme Court has acknowledged that suppression of evidence has a deterrent effect on prosecutorial misconduct. *People v. Turnage*, 162 Ill. 2d 299, 642 N.E. 2d 1235 (1994). In *Turnage*, evidence was suppressed when the police conducted a search based upon a redundant warrant procured by the State's Attorney's office.

As the Third District Appellate court for the State of Illinois pointed out in the decision below:

> The prosecutor's characterization of his error as an "honest oversight" does not preclude application of the exclusionary rule. The purpose of the exclusionary rule is deterrence (Evans, 514 U.S. at 14, 115 S. Ct. at 1193, 131 L. Ed.2d at 46-47; Turnage, 162 Ill.2d at 312, 205 Ill. Dec. 118, 642 N.E.2d at 1241), which applies not only to intentional and reckless acts, but also to negligent acts. A premise underlying all negligence law is that imposing liability can create an incentive to act with greater care, and suppressing evidence in a case such as this will provide an incentive for prosecutors to keep accurate records. Turnage, 162 Ill. 2d at 312-313, 205 Ill. Dec. 118, 642 N.E.2d at 1241.

Boyer, 305 Ill. App. 3d at 379, 713 N.E.2d at 659 (footnote 4). Prosecutors, like police, need to be reminded from time to time that where constitutional rights are at issue, it is important to maintain a close vigil over procedure.

II. The good faith exception to the exclusionary rule has been addressed by the Illinois Legislature, is a question of independent State law in Illinois, and should not be addressed by this Honorable Court.

Whether or not the good faith exception applies in the case at hand is a question of Illinois State Law. The Illinois Legislature has defined "Good faith" concerning the good faith exception to exclusion of evidence in Illinois at 725 ILCS 5/114-12 (West 1997). In defining "good faith", the legislature has utilized the good faith exclusion adopted by this Court in *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405 (1984). 725 ILCS 5/114-12 (West 1997) permits the State to assert the good faith of an officer's conduct in obtaining evidence pursuant to a facially valid warrant. While the Third District Appellate court for the State of Illinois acknowledges that the Illinois constitutional provisions concerning search and seizure are to be interpreted in the same matter as the 4th Amendment to the United States Constitution, *Boyer*, 305 Ill. App. 3d at 377, 713 N.E.2d at 657 (Footnote 1), *citing, People v. Krueger*, 175 Ill. 2d 60, 675 N.E. 2d 604 (1997), it is important to note that in the *Krueger* case, the Illinois Supreme Court departed from the United States Supreme Court rule in finding part of 725 ILCS 5/114-12 to be unconstitutional. *Krueger*, 675 N.E. 2d at 610. The *Krueger* court did so declaring the Illinois Constitution offered broader protection against unreasonable searches and seizures than the United States Constitution. *Id.* At 611.

In answering the question of good faith in *Boyer*, the Third District Appellate Court for the State of Illinois looked to *People v. Turnage,* 162 Ill. 2d 299, 642 N.E. 2d 1235 (1994). In *Turnage*, the Illinois Supreme Court, considered the good faith exception established in *Leon*

and codified at 725 ILCS 5/114-12 and how it should be applied in cases where the arresting officer on the part of who good faith is claimed did not participate in procuring the warrant he relied upon in making the challenged arrest. In *Turnage*, the court stated that the proper focus for determining the "good faith" exception to the exclusionary rule applies, where an officer executes an arrest warrant he did not procure, is not on the good faith of the executing officer, but upon whether those who procured the warrant and signaled its continued validity to the executing officer harbored an objectively reasonable belief that the warrant was valid. 162 Ill. 2d at 309, 642 N.E. 2d at 1239. The Third District Appellate Court for the State of Illinois looked to whether the State's Attorney's Office in Lee County had a good faith belief that the warrant was valid when they signaled its continued validity after the defendant, Scott Boyer, appeared in court and the warrant should have been quashed. *Boyer*, 305 Ill. App. 3d at 379, 713 N.E. 2d at 659. It determined that the State's Attorney could not signal the continuing validity of the warrant in good faith given their admission that it should have been recalled. *Id.*

In Illinois, the good faith exception to unreasonable search and seizure has been codified and defined by the Illinois legislature. The lower court was mindful of this statute in making its decision, *Id.*, 305 Ill. App. 3d at 377, 713 N.E. 2d at 657, as was the Illinois Supreme Court when it reached its decision in *Turnage*, 162 Ill. 2d at 306, 642 N.E.2d at 1235. If the decisions reached by these courts do not comport with 4th Amendment law, it is because the Illinois Constitution offers greater protections in these areas as evidenced by the Illinois court interpretations of the good faith exception under its statute. The good faith question in Illinois, and in this case specifically, was decided on independent state

grounds and should not be reviewed by this Honorable Court.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Michael A. Lancaster
(Counsel of Record)
Kevin D. Sefton
Miller, Lancaster &
Walker, P.C.
15 East 3rd Street
P.O. Box 535
Sterling, IL 61081
(815) 625-0600

Attorneys for Respondent
Scott D. Boyer